

**MINUTES OF THE
CITY PLANNING COMMISSION
MARCH 3, 2006
J. MARTIN GRIESEL CONFERENCE ROOM
TWO CENTENNIAL PLAZA – SUITE 700
805 CENTRAL AVENUE**

CALL TO ORDER

Mr. Faux called the meeting to order at 9:08 a.m.

Commission Members:

Present: Caleb Faux, James Tarbell, Terry Hankner, and Donald Mooney, David Rager

Community Development and Planning Staff: Margaret Wuerstle, Denise Faris, Skip Forwood, Caroline Kellam and Jennifer Walke

Law Department:
Julia Carney

Mr. Rager had not arrived at this point.

APPROVAL OF MINUTES

Submission of the minutes from the February 17, 2006 Planning Commission meeting for approval.

Motion:	Mr. Mooney moved approval of minutes.
Second:	Ms. Hankner
Ayes:	Mr. Faux, Mr. Tarbell, Ms. Hankner, and Mr. Mooney
Nays:	None, motion carried

CONSENT ITEMS

ITEM #1	A report and recommendation on the Release of Reservation of Pedestrian Ingress and Egress Rights and Maintenance and Repair Obligations in favor of 525 Vine Street, LLC.
ITEM #2	A report and recommendation to accept and confirm the dedication of permanent easements to public use of construction, maintenance, repair and replacement of water mains and water main appurtenances in accordance with plats designated as: "Castlebridge of Wexford, Castlebridge Lane" and "Crusade Hill Subdivision, Shattuc Avenue."
ITEM #3	A report and recommendation on the Village of Daybreak, Record Plat Phase IV – A.
Motion:	Mr. Mooney moved approval of Consent Items #1-3.
Second:	Ms. Hankner
Ayes:	Mr. Faux, Mr. Rager, Mr. Tarbell, Ms. Hankner, and Mr. Mooney
Nays:	None, motion carried

DISCUSSION ITEMS

ITEM #4 A report and recommendation on a zone change request for property located at 2300, 2308, 2312 Beechmont Avenue and 6206 Roxbury Avenue in Mt. Washington from Residential Multi-Family (RM-1.2) and Commercial Community-Pedestrian (CC-P) to Commercial Community-Mixed (CC-M).

Ms. Jennifer Walke, City Planner, presented this report.

BACKGROUND:

Dunkin Donuts and Baskin Robbins would like to construct a facility along Beechmont Avenue in Mt. Washington. The proposed site is comprised of two parcels in the Neighborhood Business District (NBD) and one adjacent residential parcel.

In 2003, the City of Cincinnati completed \$700,000 in streetscape improvements to enhance the aesthetics and the pedestrian-friendly nature of the business district.

The 2005-2009 Consolidated Plan labeled Mt. Washington as a Strategic Investment Area and recommended that the City direct resources to the community to assist in maintaining a high quality of life in the neighborhood because 2000 Census data showed that the neighborhood was nearing low-moderate income eligibility. At the request of the Mt. Washington community, the Department of Community Development and Planning is currently facilitating a comprehensive planning process for the neighborhood.

Existing Plans:

Mt. Washington Urban Design Plan (1996) designated portions of the NBD as an Urban Renewal Area, which includes the two commercially zoned parcels in this zone change request. The Urban Design Plan does not make zone change recommendations. Under the previous zoning code, the two commercially zoned parcels were zoned B-4, which did permit auto-oriented uses.

The Urban Design Plan set the boundaries of the Mt. Washington NBD. The northern boundary of the NBD is the north parcel line of 2308 Beechmont Avenue and extends westwardly across Beechmont and continues along the north parcel line of 2307 Beechmont Avenue.

The Goals of the Urban Design Plan include reinforcing the visual image and physical design of the districts as an aesthetically “village” type atmosphere and emphasizing design elements and improvements that enhance the quality of a pedestrian oriented development.

PUBLIC COMMENT:

Department of Community Development and Planning staff conducted a public conference on this zone change request on January 31, 2006. Nine people spoke in favor of the change and three opposed it. The Mt. Washington Community Council opposed the zone change and the Mt Washington Community Urban Redevelopment Corporation supported the change. In addition, staff received 19 letters from concerned citizens. Five letters were opposed to the change, thirteen were in favor and one urged the decision to be postponed until after the Comprehensive Plan was adopted.

Staff from the Department of Transportation and Engineering reviewed the revised site plan presented to the Community and stated they “do not like and would not approve” the design as presented.

ANALYSIS OF PROPOSED CHANGE:

Much time and money has been spent on the NBD to promote the pedestrian friendly nature of the business district. The subject parcels zoned CC-P serve as a gateway to the Mt. Washington Business District. The CC-P zoning will set the tone for promoting pedestrian-friendly development along Beechmont Avenue. The CC-P zoning designation also serves as a buffer between the existing residential uses along Beechmont Avenue and the more intense auto-oriented development zoned CC-M in the business district.

The boundary of the NBD exists approximately 80 feet south of the historic Corbly house, the home of one of the founders of Mt. Washington. Expanding the business district would decrease the buffer between the home and commercial development and set a precedent to expand the businesses district, placing the home in jeopardy of being demolished for commercial development.

The parcels on the west side of Beechmont Avenue across from the subject area are zoned CC-A. It differs from the site of the proposed change because it is primarily bounded by Stanbery Park and only a few single-family residences exist nearby. However, the subject site is bounded on the north and east with medium density residential development.

During a visioning session for the Comprehensive Plan, 150 people listed the following success measures for Mt. Washington’s business district: Less vacant land, a strong business district with thriving businesses, new retail buildings on available sites and places to walk.

The subject site and the remaining CC-P zoning designations in the business district are needed to serve as an anchor for the pedestrian-friendly nature of the business district.

The Mt. Washington Comprehensive Plan will focus on the business district and make sound planning recommendations for the future zoning of the district. Currently there are vacant properties for sale in the NBD that are zoned CC-M. Expanding the business district would not only promote commercial encroachment on the residential properties to the north, but also leave vacant properties in the heart of the business district, which would not be in the best interest of the community.

CONCLUSION:

1. The proposed zone change is in conflict with the Mt. Washington Urban Design Plan (1996) by extending commercial uses beyond the neighborhood business district boundaries set in the Plan.
2. Maintaining CC-P zoning designation will maximize the compatibility between the commercial and adjacent residential sites.
3. The community would like a pedestrian-friendly neighborhood business district.
4. Expanding the business district would begin a trend that would place residential properties and the historic Corbly House at risk of being replaced by auto-oriented commercial development and begin a trend of disinvestment in the heart of the Mt. Washington Business District
5. The Mt. Washington Community is in the middle of a Comprehensive Planning process. Zone changes to expand the business district are not appropriate at this time.
6. Currently there are vacant properties for sale in the NBD that are zoned CC-M of comparable size of the proposed location.

RECOMMENDATION:

Department of Community Development and Planning staff recommends that City Planning Commission take the following actions:

DISAPPROVE the zone change for 2300, 2308, 2312 Beechmont Avenue and 6206 Roxbury Avenue in Mt. Washington from Residential Multi-Family (RM-1.2) and Commercial Community-Pedestrian (CC-P) to Commercial Community-Mixed (CC-M).

DISCUSSION:

Ms. Walke explained that the property in question would require a drive-thru facility to operate on the proposed site and also that this zone change would require that the business district be extended into the residential district. She added that the City recently spent \$700,000.00 to create streetscape improvement, in the Mt. Washington business district to enhance the pedestrian friendly nature in the community.

Ms. Walke stated that the Mt. Washington Community Council held a well-attended meeting and the Council voted against the zone change.

She shared that at the Staff Conference, an adjacent property owner to the parcel in question, stated that he would also like for his property to be zoned commercial so that it he could sell it. Ms. Walke stated that this raises the questions of where the boundary lines should be drawn and when do you stop encroaching into the residential district? Ms. Walke went on to say that the lines have already been drawn in the 1996 Urban Design Plan. When Staff consulted with the Baskin Robbins/Dunkin Donuts representative, they were asked if they could possibly build on the site without re-zoning the residential parcel and they said that it was not possible.

Mr. Joe Zistler, a resident of Mt. Washington, shared that he had carefully reviewed the surrounding properties and he felt that since the proposed parcels have been vacant for many years, he did not feel it would be an imposition to the community to develop on them. He also said that in his opinion, he felt that it would make no sense to leave the property vacant.

Mr. William Pewther, a representative for Mr. Frank Klahm who is the property owner, stated that he felt that Mr. Klahm's rights to buy and sell property were being challenged by this issue. He then urged the Commissioners to consider this issue and vote in favor to allow Dunkin Donuts to develop the property that Mr. Frank Klahm has been trying to sell for the past twelve years.

Mr. Chris Klahm, son of Mr. Frank Klahm who is the property owner, stated to the Commissioners that the property had been vacant since 1993 and that this was the third offer that his father had on the property. He stated that the Mt. Washington Community Council voted against the first buyer who wanted to develop the property and that the second buyer withdrew their offer. He went on to say that if this is not approved, the community would continue to look at a vacant lot for many more years. He asked the Commission to approve the zone change.

Mr. Tarbell asked what the previous interested buyers were going to do with the property. Mr. Klahm stated that the first buyer was proposing a McDonald's Restaurant on the site, which was rejected by the Mt. Washington Community Council. The second buyers were going to develop a Donato's Pizza, which was approved by the Mt. Washington Community Council, but for various reasons they withdrew their offer. Mr. Tarbell then asked Mr. Klahm if he was aware if there had been any interested parties that would consider developing the property as a mixed-use development by using it as business and residential. Mr. Klahm said that he was not aware of any potential buyers or anyone that would consider that option. Mr. Faux asked if the proposed Donato's would have had a drive-thru facility and if that is

why the Mt. Washington Community Council rejected the proposed McDonald's. Mr. Klahm said that he did recall there being an issue with McDonald's having a drive-thru facility.

Mr. Mike Rubino, the Architect representing Dunkin Brands, addressed the Commission and showed a drawing of what the proposed site would look like. He stated that they had worked very hard to develop a plan for the site that would be pedestrian friendly for the neighborhood. Mr. Mooney asked if the drive-thru was actually needed for this type of business. Mr. Rubino stated that although it was not important for the Baskin Robbins franchise, it is extremely important for Dunkin Donuts. The drive-thru orders are over 50% of their business. Mr. Rubino went on to say that their building is only 2100 square feet and that he doubted that other businesses could develop on a parcel as small as this one. Mr. Tarbell asked for Mr. Rubino to confirm that 2/3 of the parcel would be used for parking and 1/3 for the actual business and Mr. Rubino confirmed that was a true statement. Mr. Rubino then asked for the Commissioners to consider the plan for the site because it was pedestrian friendly as well as a good transitional use for the property.

Ms. Walke pointed out that the Department of Transportation and Engineering rejected the site plan presented to the Commission because it creates traffic problems in the ingress and egress on the driveway on Beechmont Avenue. She stated that the driveway traffic must cross some of the incoming traffic onto the site. Ms. Walke also stated that there was another parcel of land appropriately zoned for this business at a different location on the same side of the street that was also 1/2 an acre. During the Staff Conference she had asked the petitioners if they had looked at other sites comparable in size to this site and they stated to her that this site is preferable because of the price.

Mr. Bill Deas, son-in-law of Mr. Frank Klahm, the property owner, stated that this strip of land is only 20 to 25 feet in width and there is not much that can be done with this property. He said that Dunkin Donuts/Baskin Robbins would be a good buffer. The prior interested party, McDonald's, needed a much bigger expansion into the residential area. He stated that the property has been vacant since 1993 and that Dunkin Donuts/Baskin Robbins would be an ideal solution to the problem with this property that has been so difficult to sell.

Ms. Barbara Sliter, a resident of Mt. Washington, handed out presentation booklets with pictures to the Commissioners. She gave the history of Mt. Washington and shared that it has a small town feel. She stated that the 1996 Urban Design Plan had helped their community grow economically while maintaining a neighborhood feel.

Mr. Mike Lacinak, a resident and business owner in Mt. Washington, stated that in his opinion, expanding into the residential district before the Comprehensive Planning Process was completed, would be detrimental to the residential neighborhood because it makes the entire block vulnerable to mixed land uses. Additionally, he added that he believes that pedestrian friendly development is possible in that area. He said that residents would like to see the planning process completed before any zoning changes are made.

Mr. Bob Luce, a resident of Mt. Washington for nearly seven years, stated that the Mt. Washington Community Council viewed the Dunkin Donuts plan during a well-attended meeting on January 12, 2006. He went on to say that a formal vote was taken during the meeting on January 18, 2006 and the Community Council voted against this zone change: 55 ayes, 35 nays. The Mt. Washington Urban Redevelopment Corporation voted 6 to 3, in favor of the zone change. However, Mr. Luce wanted to point out that their vote was not on the published agenda for that meeting which potentially affected both the attendance and the outcome of the vote.

Mr. Jeff Shumway, resident of Mt. Washington, came forth and said that the Mt. Washington Community Council was working to improve their zoning and that there was significant momentum for making the business district pedestrian friendly and maintaining the village environment. He also added that with this particular business, it would be a 24-hour drive-thru business. The other established businesses in the area are only opened during normal business hours.

Mr. Scott Kelley, a resident of Mt. Washington for the last ten years, stated that in his opinion there are safety and traffic issues with this zoning change. He stated that the proposed development would be at the crest of the hill on Beechmont Avenue and the intent of this business would be to attract morning commuters driving down the hill. He stated that would create a high volume of cars exiting onto the roadway without a traffic light at the site. He felt that to avoid traffic on Beechmont Avenue, visitors to this establishment would travel back streets. The back street is Salvador Street, which is not only narrow, but also without sidewalks. It is not designed for a high volume of traffic or any delivery truck traffic. He added that children attending school during rush hour often use this street and the city has confirmed that there is no intent to upgrade Salvador Street for this added usage.

Ms. Ann Patterson-Luce, a resident of Mt. Washington for seven years, stated that the Dunkin Donuts proposal is in no way comparable to the National City Bank zone change due to the operating hours and the amount of drive-thru traffic.

Ms. Ruth Bosley, a resident of Mt. Washington for 23 years, stated that if the zoning change were approved, there would be pressure to change the zoning on the adjoining parcels to the north. She felt that there would be nothing to stop the zoning from changing on all the parcels down Beechmont hill. She stated that the City's Community Development and Planning Department released a staff report stating that the core business district of Mt. Washington includes a number of vacant properties and expanding an underutilized commercial district would make no sense. She then shared that this zone change would most likely have a debilitating impact on the currently viable housing next to this property.

Ms. Yvonne Scheiderer, a resident and business owner in Mt. Washington, stated that Mt. Washington does have a rich history of being a pedestrian friendly village. The tradition was reemphasized in the 1996 Urban Design Plan. She stated that the zoning change would violate that intent and set a precedent in redesigning the boundaries of the business district before the Plan is complete. She stated that the Dunkin Donuts zone change is an inappropriate land use to adjoin viable residential property.

Mr. Sean Hutt, a resident of Salvador Street in Mt. Washington, stated that he was not against an establishment being built on that property. However, he believed that the necessity of a Dunkin Donuts was not needed. He said that an established Dunkin Donuts was already only two miles from this location and United Dairy Farmers store and the local Graeter's Ice Cream shop was only one mile from this location. He then stated that this property should be utilized by something that would benefit the neighborhood.

Mr. Bryan Snyder, the Vice President of the Mt. Washington Community Council, addressed the Commissioners and stated that he was there to present a copy of the letter from the President of the Mt. Washington Community Council, Greg Schrand stating the vote of the Community Council regarding this item.

Mr. Tarbell explained that it was important to maintain the character of a neighborhood and said that Hyde Park Square speaks for itself. He also gave the Schuller site in College Hill as another example of how a pedestrian friendly development is contributing to the overall well being of the neighborhood.

Ms. Hankner stated that she was impressed with the amount of energy that the neighborhood had put into this issue. She hoped that the neighborhood would now put that same energy into locating an appropriate business for the site.

Motion: Mr. Mooney moved to accept the Staff Report and turn down the zone change.
Second: Ms. Hankner
Ayes: Mr. Tarbell, Mr. Faux, Mr. Rager, Ms. Hankner, and Mr. Mooney
Nays: None, **motion carried**

ITEM #5 Proposed text amendment to §1425-19-A. Off Street Parking and Loading Requirements.

Margaret Wuerstle, Chief Planner, presented this item.

PURPOSE:

To obtain input and direction from the Planning Commission on zoning text as it relates to the 2000 square foot parking exemption for commercial uses.

PROPOSED TEXT AMENDMENT:

SECTION 1. That Schedule 1425-19-A of Chapter 1425 of the Cincinnati Zoning Code is hereby amended to read as follows:

Schedule 1425-19-A: Off-Street Parking and Loading Requirements

Use Classifications	Required Parking (Sq. Ft. of Floor Area)	Loading User Group
Residential Uses		
Bed and breakfast home	2 for every dwelling, plus 1 for every guest room	
Child day care home	No additional spaces required	
Group residential	1 for every 2 residents	
Permanent residential		
Single-family		
SF-4, SF-6, SF-10, SF-20	2 for every unit	
SF-2, RM, O, C, M, RF-R and IR	1 for every unit	
Attached single-family	1 for every unit	
Rowhouse single-family	1 for every unit	
Two-family	1 for every unit	
Multi-family		
RM2.0, RM1.2, OL	1.5 for every unit	
RM0.7, OG, C, M, RF-R and IR	1 for every unit	

Residential care facilities		
Assisted living	1 for every 4 residents	
Developmental disability dwelling	1 for every 4 residents	
Nursing home	1 for every 4 residents	
Special assistance shelters	1 for every 3 employees plus 1 for every facility vehicle	
Transitional housing	1 for every facility plus 1 for every 8 beds	
Public and Semi Public Uses		
Cemeteries	None	
Day care center	2 for every facility, plus 1 for every 8 clients	
Clubs and lodges	1 for every 100 sq. ft.	3
Colleges, public or private	1 for every 3 auditorium seats plus 1 for every 5 classroom seats	3
Community service facilities	1 for every 100 sq. ft.	
Cultural institutions	1 for every 500 sq. ft. or 1 for every 8 seats, whichever is greater	3
Government facilities and offices		
Facilities and installations	1 for every 1,000 sq. ft.	1
Correctional institutions	1 for every 20 beds	1
Offices	1 for every 750 sq. ft.	1
Hospitals	1 for every bed	3
Parks and recreation facilities	1 for every 100 sq. ft. of indoor area	
Public maintenance facilities	1 for every 1,000 sq. ft.	
Public safety facilities	1 for every 250 sq. ft.	
Religious assembly	1 for every 30 sq. ft. in principal assembly area	
School, public or private	High School: 1 for every 10 classroom seats	3
	Elementary School: 1 for every 30 classroom seats	3
Commercial Uses		
1 <u>First 2,000 square feet of floor area</u>	Exempt –No spaces required	
2 <u>Any floor area in excess of 2,000 square feet</u>	As required below	
Ambulance services	1 for every 250 sq. ft.	
Animal services	1 for every 400 sq. ft.	
Banks and financial institutions	1 for every 200 sq. ft. of first floor area, plus 1 for every 250 sq. ft. of other floor area	2

Bed and breakfast inns	1 for every facility plus 1 for every guest room	
Building materials and services	1 for every 400 sq. ft.	4
Building maintenance services	1 for every 400 sq. ft.	
Business services	1 for every 250 sq. ft.	
Commercial meeting facility	1 for every 50 sq. ft.	3
Eating and drinking establishments		
Drinking establishments	1 for every 150 sq. ft.	
Restaurants, full service	1 for every 150 sq. ft.	
Restaurants, limited service	1 for every 150 sq. ft.	
Food markets	1 for every 150 sq. ft. where it exceeds 2,000 sq. ft.	1
Food preparation	1 for every 750 sq. ft.	
Funeral and interment services	1 for every 50 sq. ft. used for assembly	
Garden supply stores and nurseries	1 for every 400 sq. ft.	
Hotels and commercial lodging	1 for every guest room	3
Loft dwelling units	1 for every unit	
Laboratories, commercial	1 for every 250 sq. ft.	
Maintenance and repair services	1 for every 400 sq. ft.	
Medical services and clinics	1 for every 150 sq. ft.	
Offices	1 for every 400 sq. ft.	2
Personal services	1 for every 250 sq. ft.	
Personal instructional services	1 for every 250 sq. ft.	
Recreation and entertainment		
Indoor and small scale		
Bingo parlors, fitness centers, gymnasiums	1 for every 50 sq. ft.	
Billiard parlors, poolrooms, amusement arcades, handball, racquetball or tennis club facilities, ice or roller skating rinks, miniature golf courses	1 for every 250 sq. ft.	
Movie theater (three or less screens)	1 for every 5 seats	
Bowling centers	5 for every bowling lane	
Outdoor or large scale		
Sports stadiums and arenas, movie theaters (4 or more screens), racetracks	1 for every 5 seats	
Amusement and theme parks, driving ranges, swimming or wave pools, entertainment complexes, drive-in theaters, archery or shooting ranges, riding stables, campgrounds	1 for every 1,000 sq. ft.	
Retail sales	1 for every 250 sq. ft.	1
Sexually oriented business	1 for every 250 sq. ft.	
Vehicle and equipment services		

Vehicle and equipment sales and rental	1 for every 400 sq. ft. of office sales or rental area	
Car wash	See § 1419-11	
Fuel sales	None	
Vehicle repair	2 for every service bay or 1 for every 250 sq. ft., whichever is greater	
Automobile holding facilities	None	
Industrial Uses		
Production industry	1 for every 1,000 sq. ft.	4
Research and development	1 for every 750 sq. ft.	2
Warehousing and storage		
Contractor's storage	1 for every 1,000 sq. ft.	
Indoor storage	4 spaces	
Waste management	1 for every 1,000 sq. ft.	
Wholesaling and distribution	1 for every 1,000 sq. ft.	4
Transportation, Communication and Utilities Uses		
Communications facilities	1 for every 600 sq. ft. plus 1 for every 3 auditorium seats	2
Public utility distribution system	1 for every 1,000 sq. ft.	
Public utility maintenance yard	1 for every 1,000 sq. ft.	
Public utility plant	1 for every 1,000 sq. ft.	
Transportation facilities		
Airports	1 for every 250 sq. ft of terminal building	1
Heliports	None	
Railroad train yards	None	
Railroad right-of-way	None	
Transportation passenger terminals	1 for every 2,000 sq. ft.	
Truck terminal and warehouse	0--100,000 sq. ft: 1 for every 2,000 feet	4
	Over 100,000: 1 for every 4,000 sq. ft. over 100,000 sq. ft.	4
Watercraft and riverfront facilities		
Barge terminals	1 for every 2,000 sq. ft.	
Boat and ship yards	1 for every 2,000 sq. ft.	
Commercial piers and ports	1 for every 2,000 sq. ft.	
Marinas	1 for every two berths	
Marine sales and services	1 for every 400 sq. ft.	
Agriculture and Extractive Uses		
Farming	1 for every site	

Mining and quarrying	1 for every 1,000 sq. ft.	
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New language underscored. Language which has been deleted is indicated by an asterisk as follows.

****I**** - “Under”

****2**** - 2,000 square feet of floor area or more

JUSTIFICATION:

On December 12, 2005 City Council indefinitely postponed the zoning text amendment Ordinances for §1425-03 Requirements for Off-Street Parking and Loading and §1425-19 Off-Street Parking and Loading Requirements. The Planning Commission previously recommended these amendments. The City Council directed staff to draft new text amendments that clearly state that the 2000 square foot exemption from the parking requirements is for the first 2000 square feet of all commercial uses as stated in the original motion passed by City Council on January 14, 2004.

DISCUSSION:

Ms. Margaret Wuerstle, Chief Planner, stated that this item has been on the agenda for the last three meetings. The City Council wanted the text changes to reflect that the first 2000 square feet of floor area was exempted for commercial uses. The Council did not want the exemption for buildings that are 2000 square feet or under. She stated that at the previous meeting the Commissioners asked how Staff arrived at the 2000 number for the square footage and requested that staff research how the number was determined. Ms. Wuerstle stated that 2000 square feet was the number that was used in the old code. She also stated that there was no magic number that determined when a business would have an impact on an area.

Mr. Faux reiterated that the Planning Commissioners agreed that small buildings that were less than 2000 square feet would be exempt from that parking requirement. He stated that City Council has taken the position that they should exempt the first 2000 square feet, regardless of the size of the building.

Ms. Julia Carney, Law Department, stated that the previous discussion of the Dunkin Donuts establishment was a prime example of what they were now discussing. She said that the Dunkin Donuts previously discussed was 2100 square feet. If you were to exempt the first 2000 square feet, that would require them to only have one parking space and if you did not make the exemption, they would be required to have fourteen.

Mr. Mooney shared that he thought that it was appropriate for the 2000 square foot exemption to be given to small business owners and felt it would be beneficial to small businesses since they were investing in the community. He then proposed to leave the original language and not exempt the first 2000 square feet for every new commercial building.

Mr. Carl Uebelacker addressed the Commissioners and stated that the current language in the code is vague and unclear. It states that it should be only for “existing” structures, otherwise he felt it would be encouraging developments to be built smaller and that would create a burden on the off-street parking situation.

Ms. Hankner stated that she understood Mr. Uebelacker’s point, but also felt that the trade-off for encouraging small businesses in communities is by offering this exemption.

Motion: Mr. Mooney moved to disapprove the change to §1425-19A.
Second: Ms. Hankner
Ayes: Mr. Faux, Mr. Rager, Ms. Hankner, and Mr. Mooney
Nays: None, **motion carried**

The reason the Commission provided for not approving this text amendment was that the 2000 square foot exemption was to assist small businesses. Businesses over 2000 square feet did not need the exemption.

ITEM #6 A report and recommendation on a proposed text amendment for §1419-21 for limited or full service restaurants.

Margaret Wuerstle, Chief Planner, presented this item.

PURPOSE:

To obtain input and direction from the Planning Commission on zoning text as it relates to outdoor areas of limited or full service restaurants and/or drinking areas.

PROPOSED TEXT AMENDMENT:

§ 1419-21. Limited or Full Service Restaurants and Drinking Establishments.

Outdoor ~~eating~~ areas of limited or full service restaurants and drinking establishments must be located, developed and operated in compliance with the following:

- (a) *Location.* Outdoor ~~eating~~ areas on any public sidewalk or alley requires a revocable street privilege.
- (b) *Maximum Size.* Within 500 feet of a residential district boundary line, the outdoor ~~eating~~ area may not exceed 25 50 percent of the indoor ~~eating~~ area accessible to the public, excluding other space not accessible to the public. Additional area requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.
- (c) *Barriers.* Decorative walls or fencing must enclose an outdoor eating area.
- ~~(d) *Alcoholic Beverages.* The provision of alcoholic beverages must be secondary and accessory to the provision of food.~~
- ~~(e) *Cooking Facilities.* Cooking facilities may not be located in outdoor eating areas.~~
- (f) *Live Entertainment.* ~~Live entertainment may not be presented in outdoor eating areas.~~ Within 500 feet of a residential district boundary line, entertainment, including the use of audio/visual equipment or amplified sound is prohibited between Midnight and 7 AM on Friday and Saturday and 11 PM and 7 AM on all other days.
- (g) *Fixtures.* Furniture and fixtures provided for use in an outdoor eating area may consist only of movable tables, chairs, umbrellas, planters, lights and heaters. Lighting fixtures may be permanently affixed onto the exterior front of the building. All movable furniture and fixtures must be removed during the off-season.
- ~~(h) *Hours of Operation.* The use of outdoor eating areas is prohibited between 11 PM and 7 AM on weekends and 10 PM and 7 AM on weekdays.~~

(i) *Breweries and Wineries*. Beer and wine production accessory to a limited or full service restaurant is limited to an area that may not exceed 10,000 sq. ft and may not produce any objectionable odor, dust or fumes.

JUSTIFICATION:

On December 16, 2005 the Planning Commission made recommendations to City Council on text changes to the Zoning Code for the regulation of outdoor eating and drinking areas. The relevant portions of the minutes of the December 16, 2005 CPC meeting are attached. The Economic Development Committee of City Council held a public meeting on the proposed text changes on February 6, 2006. Based on comments received during the public meeting, the revised text changes have been submitted by Councilmember Chris Bortz and Councilmember David Crowley for consideration by the Planning Commission.

DISCUSSION:

Mr. Mooney asked for input from Staff regarding what was approved previously by the City Planning Commission on this item and if there had been any more input from City Council.

Ms. Wuerstle stated that the proposed text amendment was approved by the Commission and went to City Council. They held a public meeting, not a public hearing, on this issue. Tavern owners as well as community representatives spoke on this issue at the public meeting. Based on those comments, the City Council makes the changes for the Commission's approvals. She also explained that with regard to the 150-foot boundary line for outdoor entertainment, City Council had increased that number to 500 feet. She stated that outside the 500 bubble, a tavern owner may have any size outdoor area as well as any type of outdoor entertainment they desire and no hour restrictions except those provided by the liquor license that they hold.

She went on to explain that within the 500 foot boundary line, the outdoor area cannot exceed 50% of the inside area. Tavern owners may have entertainment with amplified sound, but not after midnight on weekends and 11:00 p.m. on weekdays.

Mr. Faux stated that he attended the Public Meeting on this issue and he felt that the Council's concern was with the conditional use requirement. Council felt that requiring conditional use hearings would make it difficult for businesses to get their permits. He wanted to make sure that the Planning Commission and City Council would develop an appropriate solution to the problem. He added that the changes Council submitted to the Planning Commission were only the opinion of two City Council Members and certainly not the majority of Council. Mr. Faux also stated that he planned to meet with Council on this issue prior to the official action of the Planning Commission. He then suggested that the Commission listen to the speakers who were in attendance and then make some decisions on how to proceed.

Ms. Hankner also suggested that the Commissioners listen to testimony and then meet with City Council on this issue before making a final decision on the code changes.

Mr. Tarbell asked if a business owner in the audience could come forward and explain his situation to the Commission, as it was unique to the topic. Mr. Art Lykins, a business owner in Mt. Adams, addressed the Commission and stated that he owns a business and right around the corner from that business he purchased another building that he was going to develop into a restaurant or lounge. He said that he

cannot make any decisions or move forward with the project due to the pending text amendments regarding this issue. The building is adjacent to residential property.

Mr. Rager then suggested that the Commission hold this item on the agenda until further discussion with City Council so that they could cooperatively come up with a solution to this problem. Mr. Mooney stressed that he personally didn't have a problem with the part of the amendment that stated that the outdoor area could not exceed 50% of the inside area and if a vote were taken, he would probably be inclined to vote for the 50% rule. However, he believed that the problem with this issue lies with the 500-foot boundary line change.

Mr. Tarbell requested that the speakers only bring additional comments and concerns before the Commission and to keep their presentations short.

Terry Hankner left the meeting at 10:45 a.m.

Mr. Steve Slack, Trustee of the Clifton Town Meeting and Chairman of the Zoning Committee and also of the Park and Beautification Committee, expressed his concerns. The Clifton Town Meeting is against the amendment for outdoor entertainment. He stated that they are against alcohol, entertainment and cooking outside for the hours that are listed in the amendment.

Mr. Uebelacker stated that the first issue he wanted to speak on regarded the 500-foot stipulation. He felt that it was not in the best interest of the city's neighborhoods and communities. Mr. Mooney asked Mr. Uebelacker what his interest was with this issue outside of the proposed 500 feet radius. He went on to say that 500 feet was only one block and that was not enough space. Mr. Tarbell stated that there is a noise ordinance in effect and Mr. Uebelacker interjected that the noise ordinance is totally subjective in the opinion of the police officer that would be called to the scene.

Mr. Uebelacker went on to say that it is not appropriate for any tavern owner to be able to have outdoor entertainment all night long with no limitation as long as they are outside of the 500-foot radius of a residential district.

Mr. Mooney stated to Mr. Faux that his frustration with this issue was that the Commission has heard all of the previous testimony before and he was sure that there was not anyone else in the room that could share anything with the Commission that they have not already heard and understood. He went on to say that he felt that the people involved in the entertainment industry did themselves a disservice. He thought the Commission had worked diligently to help them on this issue and the tavern owners thought they could go to City Council and ask for even more. Mr. Mooney then made a motion to table this discussion until there was a chance to meet with City Council. Mr. Faux agreed and stated that he felt there was nothing more that the Commission could hear at this time to resolve the issue.

Motion:	Mr. Mooney moved to table this discussion.
Second:	Mr. Tarbell
Ayes:	Mr. Tarbell, Mr. Faux, Mr. Rager, and Mr. Mooney
Nays:	None, motion carried

**Mr. Mooney departed the meeting. There was no quorum to continue the meeting. Mr. Faux then requested that the following names be listed on the record to show their attendance and desire to speak on Item #6 on the agenda. They are as follows:*

<i>Jerry Tokarsky</i>	<i>Against Item #6</i>
<i>Dave Zimmerman</i>	<i>Against Item #6</i>

<i>Tom Ford</i>	<i>For Item #6</i>
<i>Jim Tenhundfeld</i>	<i>Against Item #6</i>
<i>Nancy Boehner Roell</i>	<i>Against Item #6</i>
<i>Michael Ramudo</i>	<i>Against Item #6</i>
<i>Pamela Kremm</i>	<i>For Item #6</i>
<i>Jeff Hettesheimer</i>	<i>For Item #6</i>
<i>Dave Young</i>	<i>For Item #6</i>
<i>Charlene Morse</i>	<i>Against Item #6</i>
<i>Gary Wollenweber</i>	<i>Against Item #6</i>

Mr. Ely Ryder asked if he could address the Commission regarding Item #7 and stated that he was fully aware that there was no quorum. Mr. Ryder asked if the Staff would consider an addition change with regard to §1427-17 of the code. He asked that Staff consider that all site signs not be subject to any other provision of chapter §1427-17.

Mr. Uebelacker asked if he could comment and stated that he questioned the validity of the Staff Report because it implied that this would put billboards out of business. He went on to say that it is not true. He said that it simply puts constraints on where a sign could be located. He then stated that he feels that the current zoning code should apply.

THE MEETING WAS CLOSED.

Margaret A. Wuerstle, AICP
Chief Planner

Caleb Faux, Chair

Date: _____

Date: _____